

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KELLY KADE,

Plaintiff,

v.

Case No. 10-14662

AMURCON CORPORATION,

Defendant.

**OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR LEAVE TO
AMEND PLEADING TO ASSERT COUNTERCLAIM**

On May 6, 2011, Defendant Amurcon Corporation moved for leave to file a counterclaim against Plaintiff Kelly Kade for defamation. Plaintiff responded in opposition to the motion on May 2, 2011, and Defendant replied on May 26, 2011. Having reviewed the briefs, the court concludes a hearing on this motion is unnecessary. See E.D. Mich. LR 7.1(f)(2).

Where the time to amend pleadings as a matter of course has expired, a party may nonetheless amend its pleadings by leave of the court, and "[t]he court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). The courts have recognized a policy favoring trying cases on the merits and liberally granting leave to amend when doing so does not prejudice an opposing party. See *Foman v. Davis*, 371 U.S. 178, 182 (1962) (leave should be freely given, absent factors "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of amendment"); *Jet, Inc. v.*

Sewage Aeration Sys., 165 F.3d 419, 425 (6th Cir. 1999). Although the proposed counterclaim could be more specific in its identification of how Defendant “recently” became aware of the alleged defamation, to whom the alleged defamation was published, and when the alleged defamation occurred, the court has not been presented with any compelling reason not to grant the instant motion. Defendant’s proposed counterclaim provides the requisite notice to the opposing party and presents sufficient facts to state a claim plausible on its face. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Conley v. Gibson*, 355 U.S. 41, 47 (1957) *abrogated on other grounds by Twombly*, 550 U.S. 544. Accordingly,

IT IS ORDERED that Defendant’s motion for leave to file a counterclaim [Dkt. # 24] is GRANTED, and Defendant is direct to file its counterclaim by **June 24, 2011**.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: June 14, 2011

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, June 14, 2011, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522

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